

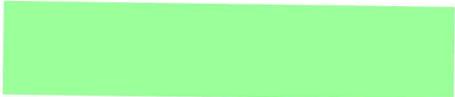


U.S. Citizenship
and Immigration
Services

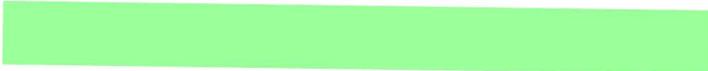
(b)(6)



Date: **MAR 10 2014** Office: PHILADELPHIA, PA



IN RE:



PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, (the “director”), denied the special immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The AAO now reopens the matter on its own motion for reconsideration. The prior decision of the AAO will be withdrawn and the appeal will be sustained.

The petitioner is a 19-year-old citizen of India who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The director denied the petition because she found that the juvenile court order did not contain the requisite findings that it was not in the petitioner’s best interest to return to India and that parental reunification was not viable due to abuse, neglect or abandonment. The AAO dismissed the appeal for the same reasons.

After the AAO issued its prior decision, it became aware of additional issues which warrant reopening and reconsideration of this case pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i).

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act. Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as:

an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

Pertinent Facts

The petitioner was born in India on January 20, 1995. On March 13, 2012, the petitioner was apprehended at the Mexican border when he attempted to enter the United States. On April 27, 2012, the [REDACTED] with the approval of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), released the petitioner into the custody of [REDACTED]. On August 21, 2012, the Delaware County, Pennsylvania Court of Common Pleas (juvenile court) temporarily placed the petitioner under the custody of [REDACTED]. The petitioner filed this Form I-360, Petition for Special Immigrant, on November 19, 2012. The director denied the petition and counsel timely appealed.

On appeal, counsel submitted a brief asserting that the petitioner was abandoned by his parents and that the requisite SIJ determinations were inherent in the temporary custody order (juvenile court order).¹ The AAO determined that while the juvenile court order briefly described the circumstances surrounding the petitioner's entry into the United States and his residence with his uncle in Pennsylvania, the order did not explicitly state that it was not in the petitioner's best interest to return to India and that reunification with his parents was not viable due to their abuse, neglect or abandonment.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reconsideration, the preponderance of the evidence shows that the determinations requisite for SIJ classification are inherent in the juvenile court order and the appeal will be sustained for the following reasons.

Requisite Findings within the Juvenile Court Order

In its prior decision, the AAO determined the juvenile court order did not contain the best interest determination required by subsection 101(a)(27)(J)(ii) of the Act because it only briefly stated that the petitioner was residing with his uncle in Pennsylvania "and that arrangement appears to be in his best interest." The order did not explicitly reflect a judicial determination that it would not be in the petitioner's best interest to be returned to India. The AAO also concluded that the order did not contain the requisite determination that parental reunification was not viable because the order stated only that based on the actions of the petitioner's parents,

¹ Counsel also argued that USCIS's requirement that juvenile court orders contain these findings violates the Tenth Amendment of the United States Constitution by compelling "state courts rendering family law decisions to employ language dictated by federal statute." Section 101(a)(27)(J)(i) of the Act does not infringe upon states' rights to implement state family law and does not compel state juvenile courts to make any determinations beyond their purview. The Act also does not interfere with state court rulings on child custody. The Act prescribes the eligibility requirements for SIJ classification, a federal immigration benefit. If an alien wishes to obtain this benefit, he or she must be subject to a juvenile court order that contains the non-viability and best-interest determinations defined at section 101(a)(27)(J)(i)-(ii) of the Act.

“they abused, neglected and abandoned” him. The order did not specifically state that parental reunification was not viable due to their abuse, neglect and abandonment of the petitioner.

On appeal, counsel asserted that temporary custody orders under Pennsylvania law are “necessarily predicated on a finding that the arrangement is in the child’s best interest” and that by finding that the petitioner should remain with his uncle in Pennsylvania, the juvenile court necessarily found that it was not in the petitioner’s best interest to reunite with his parents in his home country. Counsel also claimed that by stating the facts regarding the petitioner’s parents’ actions, the juvenile court necessarily found that reunification was not viable because their actions constituted abuse, neglect and abandonment.

De novo review of the record shows that the requisite best-interest and non-viability determinations are inherent in the juvenile court order. The order contains one page of factual findings, which states, in pertinent part, that the petitioner’s parents withdrew him from school at the age of 16 and arranged for him to be smuggled into the United States so that he could work without authorization as an unskilled laborer and support his family in India. The order states that the petitioner did not wish to come to the United States, but wanted to remain in school in India to study computer engineering. The order reports that the petitioner’s smuggling journey took approximately two months and he became sick and was hospitalized upon his arrival in the United States. The court references statements from the petitioner’s parents in which they forfeit their parental rights and indicate that the petitioner is not welcome back home. The juvenile court order concludes that based on the actions of the petitioner’s parents, they “abused, neglected and abandoned the child” and that the petitioner’s residence with his uncle “appears to be in his best interest.”

While the court order does not explicitly track the statutory language of the best-interest and non-viability determinations, a preponderance of the evidence shows that these determinations are inherent in the order. The petitioner’s affidavit, his uncle’s complaint for custody, his parents’ affidavits and the administrative record provide a reasonable factual basis for the juvenile court’s order. In his affidavit, the petitioner probatively describes how his parents withdrew him from school against his wishes and arranged for him to be smuggled to the United States to work to support his family in India. The petitioner recounted how he became sick during the difficult journey and USCIS records show that the petitioner received medical treatment upon his apprehension in the United States. The petitioner explained that his uncle was unaware of his journey and was upset with his parents for putting him at risk, but that when he and his uncle eventually contacted his parents, they were worried only about the immigration authorities and told the petitioner he could not return home to India. In their affidavits, the petitioner’s parents affirm that they had the petitioner smuggled to the United States to support their family, forfeit their parental rights and assert that the petitioner is not welcome home. The petitioner’s uncle’s complaint for custody reiterates these facts and asserts that it is not in the petitioner’s best interest to be returned to India as his parents abused and abandoned him.

In this case, the juvenile court order provides factual findings supported by and consistent with other relevant evidence in the record which, when considered in the aggregate, demonstrate that the court determined that the petitioner’s reunification with his parents was not viable due to their abuse, neglect and abandonment and that it would not be in his best interest to be returned

to India. The AAO's prior determination to the contrary shall be withdrawn. The petitioner has demonstrated that he is eligible for and merits the agency's consent to a grant of SIJ classification, as required by section 101(a)(27)(J) of the Act.

Conclusion

Upon reopening and reconsideration, the AAO withdraws its prior decision. In these proceedings, the petitioner bears the burden of proof to establish his eligibility for SIJ classification by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met this burden. The appeal will be sustained and the petition will be approved.

ORDER: The November 12, 2013 decision of the Administrative Appeals Office (AAO) is withdrawn. The appeal is sustained and the petition is approved.